

SERVED: January 8, 1993

NTSB Order No. EA-3768

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 6th day of January, 1993

THOMAS C. RICHARDS,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-10765
v.)	
)	
DAVID C. ANDERSON,)	
)	
Respondent.)	
)	

OPINION AND ORDER

On December 4, 1990, Administrative Law Judge Jimmy N. Coffman issued an oral order dismissing,¹ on the Administrator's motion, respondent's appeal from an order suspending his private

¹In addition to granting the motion to dismiss, the law judge affirmed the Administrator's order. Since, however, no evidence had been introduced in support of the order of suspension, the law judge lacked authority to affirm it. See, e.g., Administrator v. Wells, NTSB Order No. EA-3742 (served November 25, 1992)(Decision of law judge a nullity to the extent it upheld charges with respect to which no evidence had been offered).

pilot certificate for 90 days.² The basis for the dismissal was respondent's failure to appear at the time and place scheduled for the evidentiary hearing on the charges in the suspension order. In his appeal, respondent asks that his case be reinstated for a new hearing in light of what he believes to be his understandable confusion over where the hearing was to be held. We will deny the request.³

Respondent appears to have arrived at the hearing site only 10 to 20 minutes after his hearing was scheduled to begin. However, because the respondent was not present in the hearing room when his case was called, the law judge dismissed it and reconvened another hearing, begun earlier that day, in a case that would have been continued until after the completion of respondent's hearing had he appeared on time. Although counsel for the Administrator, on leaving the hearing room shortly after the dismissal, spoke to respondent when he arrived and suggested that he speak to the law judge during a break or at the conclusion of the reconvened hearing to explain why he was late, there is no indication in the record that respondent ever attempted to contact, or succeeded in talking to, the law judge, or that the law judge was ever even aware that the respondent had

²The Administrator's suspension order alleged violations of sections 91.90(a)(1), 91.90(d), and 91.9 of the Federal Aviation Regulations.

³The Administrator has filed a response in opposition to the appeal. Although the Administrator had earlier filed a notice of appeal in the case, we assume that that filing was in error, as the law judge granted the relief the Administrator sought by his motion to dismiss.

belatedly showed up in the hearing room.

Respondent makes no argument that the law judge erred in dismissing his case, and he does not challenge the sufficiency or accuracy of the notice he received giving the address for the hearing. Rather, his request for another opportunity for a hearing rests on his apparent belief that he should be excused for not appearing on time for the first one. We do not agree. The possibility that respondent would have appeared on time if he had not mistakenly gone initially to the U. S. Courthouse next to the federal building in which his case was to be heard might be relevant if the notice of hearing was the source of respondent's confusion. However, the notice clearly specified that the hearing would be in the P.J.K.K. Federal Building. Thus, we are unable to conclude that respondent's assumption that the courtroom for his hearing would be in the federal courthouse provides good cause for excusing his delay in reaching the correct location.

ACCORDINGLY, IT IS ORDERED THAT:

The respondent's appeal is denied.

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order. Member HART submitted the following concurring statement.

DISSENTING STATEMENT BY ME-3
FOR NOTATION NO. 5933
December 17, 1992

Dissent by Member Hart: Timely attendance at hearings in unquestionably essential to the fair and efficient operation of our certificate action appeal process, and I agree that failure to attend hearings on time should not be taken lightly.

In the instant case, however, I do not agree that the appeal should be dismissed. It would not be unreasonable for a layperson to think that an adversarial matter such as this one would be heard in a courthouse, and because Respondent clearly had no incentive to go the wrong building intentionally, I believe that going to the U.S. Courthouse instead of the Federal Building next door did not reflect an undue lack of diligence.

After he went to the wrong building, he made reasonable efforts to find out promptly where he was supposed to be, and he went to the correct place as soon as he found out where that was. Inasmuch as he tried to appear (as opposed to ignoring the appeal altogether), and his original mistake and subsequent correction efforts were not unreasonable, I believe that he had good cause for being late, and his lateness should not be punished with a sanction as severe as dismissal when there are other less severe sanctions that could have been imposed for Respondent's lateness without denying him the right to be heard on the merits.